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STATE FOR EEB, L, AND AF
STATE PLEASE PASS TO USTR

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TAGS: ETRD EINV ELAB ECON EAID PGOV PREL AMGT APER
ASCH, MZ
SUBJECT: LABOR LAW THREATENS U.S. INTERESTS

REF: A. MAPUTO 493
¶B. MAPUTO 381
¶C. JACKSON-ROTH EMAIL 4/22/09
¶D. ROTH-JACKSON EMAIL 5/12/09

¶1. SUMMARY/ACTION REQUEST: Mozambique's new labor law sets complicated requirements for quotas and credential validation for foreigners. U.S. companies and nonprofits along with the American school have requested USG advocacy as the law is significantly hindering their ability to invest and implement programs in areas where local employees with the needed skills are scarce. Mission family members are no longer able to work on the local economy. The GRM has so far been unresponsive to efforts to negotiate bilateral agreements in these areas. The labor law appears to conflict with the U.S.-Mozambique Bilateral Investment Treaty's (BIT) articles on foreign worker quotas and credential validation, possibly abrogating the treaty. The Embassy has aggressively pressed the GRM for resolution to the visas issue, noting that USG assistance programs cannot be implemented without foreign specialized labor. We request Washington guidance soonest on whether the BIT has been violated and whether the BIT can be used to resolve the growing number of labor-related concerns. END SUMMARY/ACTION REQUEST.

¶2. Mozambique's labor code (enacted on December 30, 2008) requires that, depending on the size of the organization, no more than five to ten percent of workers can be foreigners (ref A). Any requests for additional foreign workers above the quota must be reviewed on a case-by-case basis. All foreign employees must have their education and professional credentials validated by the Ministry of Labor before being approved for work visas. The Ministry of Labor's bureaucratic process to validate and approve cases has been so slow that it can often take up to 12 months before finalization. In many instances, the applicant ultimately withdraws the application and seeks employment elsewhere. Furthermore, in cases where no local educational/professional equivalencies exist, applications have been denied outright.

U.S. Companies Request USG Advocacy

¶3. The AmCit CEO of Opportunity Bank, a U.S.-owned and supported financial institution, recently had his work visa denied because the application put the company's number of foreign workers above quota. The AmCit CEO of Houston-based Anadarko Petroleum's Mozambique subsidiary initially had his work visa denied because no local equivalent to his professional credentials as a petroleum engineer exists.

While his application may be eventually approved upon appeal--Anadarko has not yet hit its quota limitation--the CEO expressed concern that when exploratory drilling commences later this year, the necessary American workers (petroleum technicians and geophysicists) will not be approved, even though there are no Mozambicans who are qualified in these areas. Both companies have now formally requested USG guidance and advocacy. Other U.S. companies have informally requested guidance as well.

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U.S. Nonprofits and School Ask for USG Support
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¶4. U.S.-based nonprofits are also affected. As a group, more than ten U.S. NGOs have asked for USG support, and some have begun moving operations across the border into South Africa or are considering complete withdrawal. For example, John Snow International (a key USAID implementing partner) has lost four expat staff in the past month, and is expected to lose one more soon. These staff include a PhD biochemist and the software engineer who wrote the logistics program used by the Ministry of Health to coordinate and deliver anti-retroviral drugs throughout the country--skill sets not available in-country. Another implementer of USG assistance, Vanderbilt University, has had nine foreign medical doctors, nurses, and other allied health experts suspended or denied work permits in recent weeks. Other nonprofits also indicate that foreign medical doctors have been denied visas--especially worrisome in a nation with one of the lowest ratios of doctors per capita in the world. In all,

more than 80 expatriate professionals have been denied work visas for U.S. nonprofits in Mozambique, thus significantly hindering U.S. investment in the country's social and health systems.

¶5. The Director of the American school informed the Charge in early May that by the end of the school semester, 90 percent of the expatriate teachers there will no longer have valid work visas. Of all the applications pending before the Ministry of Labor for validation of academic credentials, only three have been approved, in spite of a significant dearth of English-speaking teachers in the country. The director indicated that teachers would be effectively relegated to working illegally at the beginning of the new school year, a factor negatively impacting teacher morale and recruitment efforts. While the school has not contemplated closure, any impairment in the school's operations would reduce Mozambique's attractiveness to U.S. (and other) investors (and U.S. Embassy personnel) with families. The GRM has not responded to repeated Embassy efforts to engage on a bilateral agreement to clarify the school's status.

Dependents of Diplomats Cannot Work

¶6. The labor code also states that dependents of diplomats who enter the country on diplomatic visas are expressly prohibited from working in Mozambique, and a literal reading of the text indicates that the prohibition applies even to work in diplomatic missions. While the latter point is likely unenforceable, at this time no/no USG dependents have been able to find employment on the local economy since implementation of the law. The GRM and the USG do not have a Bilateral Work Agreement (BWA) in place, and it would appear that a de facto BWA is also no longer practicable. We have updated post's FAMER to reflect this situation. Repeated Embassy efforts to engage the GRM on a new BWA have been ignored, even though we have emphasized that there could be negative consequences for the Mozambican missions in the United States.

Conflict with Bilateral Investment Treaty?

¶7. The U.S.-Mozambique Bilateral Investment Treaty (BIT) entered into force on March 3, 2005 after ratification by the United States Senate and the Mozambican Council of Ministers. Article 1 gives a broad definition of the types of entities that are protected by the treaty, which would appear to include for-profit companies as well as non-profit organizations and schools. Article 7 also states that U.S. entities are exempt from quotas on the number of U.S. workers and from validation requirements of education and professional credentials. This would suggest a conflict between the labor law and the BIT (ref C). Local lawyers informally suggest to Emboffs that in Mozambique, international treaties do not pre-empt national law, and that in this case it is possible that the labor code may abrogate the BIT.

Embassy Aggressively Pressing GRM

¶8. The Charge and other officers in the mission have raised these concerns at all levels of the GRM, including with Ministers of the Presidency, Foreign Affairs, Commerce, Education and Labor, calling for prompt resolution of visa issues for foreign workers. The Charge has specifically noted in these meetings that the labor law is having the unintended effect of hindering foreign investment and also complicating the delivery of international donor assistance (refs A & B). We have also shared copies of the BIT with ministries, and have urged that it be used as a mechanism to quickly solve these difficulties. To date, we have received no substantive response on whether there is GRM willingness to use the BIT in this way.

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COMMENT/ACTION: U.S. Assistance, Investment Harmed

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¶9. Clearly the intent of the labor law is to protect Mozambican workers and create new employment opportunities for them. However, U.S companies and entities are unable to hire locally for specialized skill sets in health, engineering, finance and education. GRM refusal of work visas for American professionals in these areas is a significant obstacle to investment. Furthermore, USG donor assistance--clearly an investment in Mozambique's development and its economy--is also at risk, as U.S. and local entities that administer USG funds cannot hire the needed professionals to implement key programs, especially in health. We ask that State and USTR review the text of Mozambique's labor law (sent ref D) and advise whether the BIT has been abrogated, and if not, whether it can be used to resolve this issue. We believe the BIT represents the most promising short-term solution for U.S. companies, non-profits implementing USG assistance and the American school. The BIT is an agreement that has already entered into force, and one that the GRM has reiterated its commitment to respecting--most recently on March 24 in Washington during Trade and Investment Framework Agreement discussions with the U.S. Trade Representative.

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